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October 13, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: Equal Access and Interconnection Obligations Pertaining to the Commercial Mobile Radio Services, CC Docket No. 94-54

Dear Mr. Caton:

On behalf of Time Warner Telecommunications, I enclose for filing an original and five copies of the Reply Comments of Time Warner Telecommunications in Response to the Notice of Proposed Rulemaking. I have also enclosed an additional copy of the Reply to be date-stamped and returned to me.

If you have any questions regarding this, please do not hesitate to call me.

Sincerely,

William F. Adler

William F. Adler
Counsel for
Time Warner Telecommunications

Enclosures

19355

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

To: The Commission

REPLY COMMENTS OF TIME WARNER TELECOMMUNICATIONS IN RESPONSE TO THE NOTICE OF PROPOSED RULEMAKING

Time Warner Telecommunications, a Division of Time Warner Entertainment, L.P. ("TWT"), hereby submits its Reply Comments in this proceeding concerning the issues of equal access and interconnection as they relate to Commercial Mobile Radio Service ("CMRS") providers.[1]

I. THE COMMISSION SHOULD NOT IMPOSE EQUAL ACCESS REQUIREMENTS ON CMRS PROVIDERS.

In reviewing the comments submitted in this proceeding, one trend is clear--the vast majority of the commenters argue against imposition of equal access obligations on CMRS providers. Even the carriers that have already incurred the trouble and expense of implementing equal access, namely the cellular affiliates of the Regional Bell Operating

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[1]Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54/RM-8012, FCC 94-145 (released July 1, 1994) (hereafter "Notice").

Companies ("RBOCs"), want to dispense with the requirement.[2] Only the interexchange carriers, who could hardly be expected to do otherwise, embrace the idea of imposing equal access obligations on all CMRS providers.[3]

TWT joins the chorus of disapproval. The costs of implementing equal access would be substantial, and there are virtually insurmountable practical problems associated with implementing equal access in today's (and tomorrow's) wireless environment. In addition, in the competitive CMRS marketplace of the future, consumer demand will adequately dictate the service packages CMRS providers should offer. Indeed, in the current marketplace, it has been the experience of many commenters that there is no consumer demand for equal access.[4] In light of all of these reasons not to impose equal access obligations on CMRS providers, the notion of regulatory parity alone does not tip the balance in favor of imposing equal access.

A. Implementation of Equal Access Would Be Too Costly From An Administrative Standpoint

Although many parties expressed concern about the costs of equal access from a technological standpoint, TWT is most concerned with the administrative costs involved in implementing equal access. For example, Century Cellunet, serving approximately 200,000 subscribers, estimates that the costs of developing balloting procedures, educating customers and training employees would cost approximately $500,000, while the ongoing costs of

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[2]See, e.g., Comments of Southwestern Bell Corporation.

[3]See, e.g., Comments of MCI.

[4]See, e.g., Century Cellunet Comments at 10-11; Florida Cellular RSA Limited Partnership Comments at 2.

administering equal access would cost approximately $208,200 per year.[5] Hefty administrative costs running into the hundreds of thousands of dollars would be quite a burden for start-up systems such as PCS, and would only serve to delay such systems from becoming truly competitive in the marketplace. To impose such costs on fledgling technologies in the absence of any evidence of customer demand for equal access would simply not make sense.

Indeed, customers today can already reach the interexchange carrier ("IXC") of their choice through the use of various dial-around arrangements (i.e., 800, 950, and 10XXX access). As Century Cellunet pointed out in its comments, the speed calling features common on many cellular telephones today renders the burdens of such dial-around arrangements insignificant.[6] In the fully competitive CMRS marketplace of the future, should customers find such dialing arrangements too burdensome, they can easily switch to another CMRS provider. A CMRS provider that loses too many customers in this fashion will soon voluntarily provide equal access to its customers in an effort to be more competitive. Thus, the competitive marketplace, not burdensome regulations, should dictate whether for an individual CMRS provider the costs of equal access outweigh the benefits.

Should the Commission nonetheless choose to impose equal access obligations on CMRS providers, such costly administrative procedures as balloting, default allocation and

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[5]Century Cellunet Comments at 1, 5.

[6]Id. at 7. TWT would not object if the Commission were to require carriers to unblock 800, 950 and 10XXX access for all subscribers.

1+ presubscription should not be required.[7] Instead, CMRS providers should only be required to notify customers that they can choose their IXC, and that if the customers choose not to respond, they will be assigned to a particular IXC. These minimal requirements would greatly reduce the administrative costs of implementing equal access.

B. The Diversity of Service Area Definitions Would Render Equal Access Implementation Too Complex

Currently, there are a wide variety of service area definitions in effect for the various telecommunications services. The RBOCs and McCaw (by virtue of its merger with AT&T) use the local access transport areas ("LATAs") pursuant to the MFJ,[8] cellular carriers use Rural Service Areas ("RSAs") and Metropolitan Statistical Areas ("MSAs"),[9] the Commission has developed Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs") for PCS,[10] and ESMR uses wide area service markets.[11]

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[7]See also OneComm Corporation Comments at 18-19 (suggesting that if equal access obligations are imposed upon CMRS carriers, balloting, presubscription and allocation measures should not be required; rather, CMRS carriers should only be required to offer equal access upon a bona fide request); APC Comments at 2-3 (asserting that "[i]mposing particular equal access burdens -- such as balloting or 1+ dialing -- and the associated costs on PCS providers will inhibit these start-up systems from becoming truly competitive with cellular"); PCIA Comments at 8 (suggesting that the Commission closely examine the costs and benefits before imposing costly measures such as 1+ presubscription and balloting procedures).

[8]United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D. D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983). As a result of a series of wireless LATA boundary waivers and the AT&T/McCaw merger, there are already dozens of exceptions to the original LATA boundaries.

[9]47 C.F.R. §§22.901, et seq. (1993).

[10]Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7729-33 (1993).

Should the Commission establish a new service area definition or adopt one of the existing definitions for the purposes of implementing equal access obligations for CMRS providers, there could be an enormous economic and technical impact on the wireless industry. The RBOCs and McCaw, representing some 60 to 70 percent of cellular subscribers, already operate many multi-LATA wide area systems. The carriers serving the remainder of the cellular subscribers, including GTE, the second largest in terms of population covered, have constructed their systems with complete disregard for LATA boundaries. Even if the Commission were to choose MTAs, the only geographic areas under consideration which are larger than LATAs, there would still be enormous problems for licensees. The RBOCs and AT&T/McCaw could not conform their cellular systems without a host of waivers[12] and expensive system reconfigurations. Among the PCS licensees, those serving BTAs would have a different and more costly equal access obligation than those serving MTAs.

Notwithstanding the insurmountable task of conforming system boundaries, the prescription of equal access areas would also require the Commission to predetermine the competitive environment for PCS. CTIA expressed this point well in its comments by stating that "because many CMRS services have not yet been designed or deployed, the Commission cannot be sure in drawing such artificial boundaries that they will be compatible with the

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[11]See generally, Future Development of SMR Systems in the 800 MHz Band, Notice of Proposed Rulemaking, 8 FCC Rcd 3950 (1993).

[12]AT&T/McCaw's service areas are prescribed in United States v. Western Electric Co., Civ. No. 82-0192 (HHG) (D. D.C. Aug. 25, 1994). A proposed consent decree between AT&T and the Department of Justice is pending.

way the service is offered and used by subscribers."[13] In adopting a combination of MTAs and BTAs, the Commission explicitly wanted to avoid "unnecessary fragmentation of natural markets."[14] The complexity of and the confusion created by the implementation of equal access obligations could thus have very costly and unpredictable consequences. Couple such costs with the administrative costs involved in implementing equal access, and the burdens on new technologies such as PCS are staggering.

C. In A Competitive Market, Equal Access Obligations Are Unnecessary

A host of commenters observes that the competitive nature of the wireless services additionally renders equal access obligations unnecessary. With an anticipated four or five CMRS providers in each market, and in the face of vigorous competition among IXCs for long distance revenues, a dissatisfied customer can switch to another CMRS provider in the same market that offers the more attractive local (or wide-area) and long distance service package. In this way, the market, rather than heavy-handed regulation, will dictate what long distance options a CMRS provider should offer. Additionally, as Cox pointed out in its comments, the presence of multiple CMRS providers in each market will mean that no IXC will be at a disadvantage if it is not provided equal access to a particular CMRS network.[15] While it is theoretically possible for one IXC to be the designated long distance carrier for all CMRS licensees in a particular market, such a scenario is extremely unlikely. Thus, not only are equal access obligations costly and burdensome, but they are also unnecessary.

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[13]CTIA Comments at 15; see also Cox Comments at 14-15.

[14]Personal Communications Systems, 8 FCC Rcd at 7732.

[15]Cox Comments at 14.

II. INTERCONNECTION ISSUES

A. TWT is Inclined to Support Tariffing Requirements

Within the cellular industry, there is a split of opinion regarding whether or not the Commission should require LECs to file tariffs for interconnection services.[16] TWT is inclined to believe that those parties arguing for the imposition of tariffing requirements have the better argument. TWT agrees with Cox that the threat of competition from CMRS providers will drive LECs to impose high interconnection rates as an anticompetitive measure.[17] The current system of "good faith" negotiation simply does not adequately address this problem. Thus, tariffing and informational filing requirements are necessary to insure not only that LECs interconnection rates are reasonable, but also that they are non-discriminatory.

B. The Commission Should Endorse "Bill and Keep" Compensation Arrangements

Currently, the Commission requires that LECs provide interconnection to CMRS providers under a mutual compensation scheme.[18] Under a mutual compensation scheme, one party compensates the other for the costs the other party incurs in terminating traffic that originates on that party's facilities, and vice versa. Although this model can work when the traffic loads between the two interconnected parties are roughly balanced, the mutual

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[16]See Cox Comments at 11-13 (pro tariffing); NCRA Comments at 18-20 (pro tariffing); CTIA Comments at 17-23 (against tariffing); APC Comments at 5 (against tariffing); Comcast Comments at 7-9 (tariffing not necessary, but filing interconnection agreements, state tariffs, and billing and collection arrangements for inspection is essential).

[17]See Cox Comments at 5.

[18]Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1498 (1994).

compensation scheme breaks down when one party has substantially greater market power. Because CMRS providers currently (and for the foreseeable future) originate far more traffic than they terminate, LECs are in the position to extort unreasonably high "mutual" compensation rates from CMRS providers, since they will more often than not be receiving this high rate.[19]

In its comments, Comcast suggests that the Commission consider adopting a "bill and keep" or "sender keep all" LEC interconnection compensation model with zero prices for terminating service as a close approximation to the theoretically correct policy of cost-of-service based interconnection rates when the incremental cost of terminating service is in fact low.[20] TWT joins Comcast in urging the Commission to specify a compensation arrangement that is adapted to the CMRS marketplace. The Commission should not force LECs to offer, and CMRS providers to accept, interconnection based upon a mutual compensation scheme, since such a scheme is inevitably disadvantageous to CMRS providers. "Bill and keep," in contrast, is more economically rational and clearly more in step with the trend in the industry away from complex transactions among carriers modelled on the old Bell System's revenue sharing and settlements processes.

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[19]Both Comcast and Cox recognized this point in their Comments. See Comcast Comments at 11-13; Cox Comments at 9. This situation is analogous to the international settlements problem which has resulted in a large balance of payments deficit for the United States and has concerned the Commission for many years. See Regulation of International Accounting Rates, Further Notice of Proposed Rulemaking, 6 FCC Rcd 3434 (1991).

[20]Comcast Comments at 14-15. TWT understands that in some states local exchange carriers themselves are considering or implementing "bill and keep" to replace their traditional settlement practices.

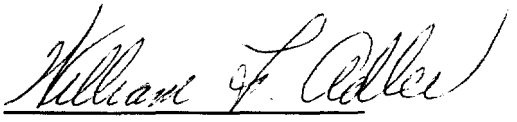
III. CONCLUSION

The Commission must avoid imposing unnecessary, burdensome regulations upon CMRS providers when such regulations will only serve to hamper the development of new technology and the entrance of new competitors into the telecommunications marketplace. Equal access obligations are precisely the type of burdensome regulation that the Commission should refrain from imposing upon fledgling CMRS providers. Not only would equal access implementation be costly and complex, but it is also unnecessary in a competitive market and undesired by customers.

The Commission must also approach interconnection issues with caution and with an eye toward supporting CMRS providers in their entrance into the marketplace. Such measures as requiring tariffed interconnection agreements with LECs and promoting a "bill and keep" practice for intercarrier transactions are both steps in the right direction.

Respectfully submitted,

TIME WARNER TELECOMMUNICATIONS



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